

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Company d/b/a	:	
AmerenIP and Ameren Illinois	:	
Transmission Company	:	
	:	06-0706
Petition for a Certificate of Public	:	
Convenience and Necessity, pursuant	:	
to Section 8-406 of the Illinois Public	:	
Utilities Act, to construct, operate and	:	
maintain new 138,000 volt electric	:	
lines in LaSalle County, Illinois.	:	

PROPOSED ORDER ON REOPENING

DATED: May 17, 2010

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By the Commission:

I. PROCEDURAL HISTORY

On November 1, 2006, Illinois Power Company d/b/a AmerenIP ("IP") and Ameren Illinois Transmission Company ("AITC") (collectively "Petitioners") filed with the Illinois Commerce Commission ("Commission") a petition seeking a Certificate of Public Convenience and Necessity pursuant to Section 8-406 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., authorizing IP and AITC to construct, operate, and maintain two new 138 kilovolt ("kV") electric transmission lines in LaSalle County, Illinois. Petitioners also sought an order approving the construction of the transmission lines pursuant to Section 8-503 of the Act. Petitioners did not request authority to take property under Section 8-509 of the Act.

Petitioners are wholly-owned subsidiaries of Ameren Corporation. IP is a public utility within the meaning of Section 3-105 of the Act engaged in the business of supplying electric power and energy throughout its certificated service territory within Illinois. AITC is an Illinois corporation that Petitioners proposed would fund, construct, and operate the subject transmission lines in conjunction with IP. AITC and the transmission activities that it seeks to engage in satisfy the definition of "public utility" under Section 3-105 of the Act.

One of the transmission lines at issue in this proceeding will run from IP's existing North LaSalle Substation in LaSalle, Illinois to the Wedron Fox River Substation in Wedron, Illinois. This transmission line will be approximately 24 miles in length. The other transmission line will run from IP's existing Ottawa Substation in Ottawa, Illinois to the Wedron Fox River Substation. This transmission line will be approximately 9 miles in length. The Wedron Fox River Substation includes a 138/34.5kV transformer supplying the 34.5kV network serving the Marseilles, Ottawa, and Wedron area.

Petitioners proposed specific routes for each transmission line in their petition. Other parties that intervened in this proceeding proposed alternative routes.

The Commission conducted a public forum on July 12, 2007 in North Utica, Illinois. Numerous persons expressed their opinions and concerns regarding the proposed lines, particularly with respect to the location of the proposed lines. A copy of the transcript taken at the public forum is available on the Commission's e-Docket system.

Numerous entities and individuals filed petitions for leave to intervene. Among the interveners were the Village of North Utica ("Utica"), the City of Ottawa ("Ottawa"), the City of LaSalle, and LaSalle-Peru Township High School District No. 120 ("District"). The Illinois Municipal Electric Agency ("IMEA") also intervened. Property owners that intervened as individuals include Robert and Linda Dolder, Donna Wahlstrom, Patricia Leary, as Executor of the estate of Margaret Kennedy and Trustee of the Margaret Kennedy Declaration of Trust, and Brien Nagle, as Successor Trustee of the LeRoy Nagle Declaration of Trust. Commission Staff ("Staff") participated as well.

Several landowners along the various proposed routes also joined together to intervene as groups: Safety and Health of Our Community and Kids ("SHOCK"), Proponents of Tourism and Economic Development along Interstate 80 ("PROTED"),¹ and Illinois 71 Resistors ("Resistors"). SHOCK formed in May, 2006 in response to Petitioners' preliminary proposal to construct a transmission line through rural areas of Dimmick, Wallace, and Waltham Townships. PROTED formed in response to Petitioners' proposal in its petition to construct a transmission line along Interstate 80 ("I-80") between LaSalle and Ottawa. Resistors formed in response to Petitioners' proposal in its petition to construct a transmission line along State Route 71 between Ottawa and Wedron. Additionally, a pre-existing group of individuals in western LaSalle and eastern Bureau Counties known as Save Our Little Vermillion Environment, Inc. ("SOLVE") intervened. SOLVE is concerned with protecting and restoring the Little Vermilion River valley. SOLVE is also a member of PROTED.

Petitioners, Staff, SHOCK, PROTED, Resistors, SOLVE, Ottawa, Utica, the District, and IMEA each called one or more witnesses who offered testimony at the September 2007 evidentiary hearings. The witnesses are identified in the March 11, 2009 Order in this matter. In the March 11, 2009 Order, the Commission concurred with the analysis of the need for the proposed facilities and found, in accordance with Section 8-406 of the Act, that construction of a 138kV transmission line between LaSalle and a substation in Wedron and a 138kV transmission line between Ottawa and a substation in Wedron is necessary to provide adequate, reliable, and efficient service to customers in the area. The Commission also found in the March 11, 2009 Order, in accordance with Section 8-406, that Petitioners are capable of efficiently managing and supervising the construction process and are capable of financing the proposed construction without significant adverse financial consequences for themselves or their

¹ PROTED is the successor in interest to Ameren I-80 Route Opponents, which had previously intervened.

customers. The Commission authorized Petitioners to construct the transmission lines pursuant to Section 8-503 of the Act as well.

With regard to the least-cost means of satisfying the service needs of customers, as discussed in Section 8-406 of the Act, the Commission found that construction of the LaSalle-Wedron transmission line along Petitioners' primary route (along I-80) was preferable to a rural route despite objections from property owners along the primary route. The Commission chose the route for the Ottawa-Wedron transmission line based on a stipulation entered into by Petitioners, Resistors, and Ottawa. The stipulated route is favored by Resistors and largely follows a railroad track along the western bank of the Fox River, whereas Petitioners' preferred route ran along State Route 71. As discussed on page 65 of the March 11, 2009 Order, however, the Commission adopted the stipulated route with some hesitancy.

The Commission's concerns with the stipulated route stemmed from the fact that throughout their testimony and the September 2007 evidentiary hearings, Petitioners opposed the use of Resistors' preferred Ottawa-Wedron route along the Fox River. Petitioners maintained that their preferred route along State Route 71 is superior on an overall basis. Petitioners' position changed, however, following the discovery of an irregularity with portions of Petitioners witness Roger Cruse's testimony at the September 27, 2007 evidentiary hearing. Specifically, during cross-examination, it came to light that Mr. Cruse had not prepared portions of his written testimony in this proceeding and had instead used the work of a consulting firm (Natural Resources Consulting, Inc. ["NRC"]) hired by Petitioners as his own work. Following this realization, Petitioners, Resistors, Ottawa, and other parties worked together to address this situation. Eventually, on January 2, 2008, Petitioners filed a stipulation signed by themselves, Resistors, and Ottawa pursuant to which the signatories would support construction of the transmission line along the Fox River and Resistors and Ottawa would drop their objections to Mr. Cruse's testimony.

Given the impact of this change in position, the Administrative Law Judge directed Petitioners to notify the relevant government agencies of this potential change in the transmission line location. On January 8, 2008, Petitioners mailed letters to the Illinois Historic Preservation Agency ("IHPA"), Illinois Department of Natural Resources ("IDNR"), Illinois Nature Preserves Commission, United States Fish and Wildlife Service ("USFWS"), and United States Army Corps of Engineers ("USACE") explaining Petitioners' change in position. The letters included a copy of the stipulation and map depicting the Fox River route. None of the agencies intervened or otherwise appeared on the record in this proceeding. Property owners along the Fox River route received notice of this proceeding shortly after Resistors witness Paul Mixon² introduced the route in his March 2007 direct testimony. None intervened or otherwise entered an appearance.

²Paul Mixon is an Associate Professor of Electrical Engineering with the College of Engineering at Arkansas State University.

At page 65 of the March 11, 2009 Order, the Commission noted Petitioners' firm support for constructing the Ottawa-Wedron transmission line along State Route 71. Despite their many concerns, however, the Commission understood that Petitioners seem to have accepted Resistors' Fox River route in order to resolve the serious issue with Mr. Cruse's testimony. The Commission indicated that it was not clear whether this change in position and change in the line location was least cost and in the best interest of all in the area. But given the lack of opposition to Resistors' Fox River route at that time following notice to affected landowners and government agencies, the Commission found itself with insufficient reason to choose a route other than Resistors' Fox River route.

Following the entry of the Order on March 11, 2009 and the initiation of efforts by Petitioners to negotiate easements with property owners along the Fox River route, the Commission received a petition for rehearing from Skydive Chicago, Inc. ("Skydive Chicago"), Ottawa Airport, Inc. ("Ottawa Airport"), and the Fox River Alliance ("FRA"). FRA consists of residents of Dayton Township that would be affected by the construction and operation of a transmission line along the Fox River as approved in the March 11, 2009 Order. Those seeking rehearing alleged that multiple reasons exist for reconsidering the Ottawa-Wedron transmission line route. The petition for rehearing was received on May 11, 2009, well after the April 13, 2009 deadline for submission of such filings. At its May 20, 2009 meeting, the Commission denied the petition for rehearing.

Thereafter, on September 3, 2009, Skydive Chicago, Ottawa Airport, FRA, and Friends of the Fox River ("FFR") filed a pleading entitled "Suggestion that the Illinois Commerce Commission Re-open this Cause of Action on its own Motion." FFR is a conservation group dedicated to preserving the Fox River. The September 3, 2009 document made several arguments that the public interest would be best served by reopening this matter to reevaluate whether the approved Fox River route between Ottawa and Wedron is really the best choice. The Commission agreed at its September 29, 2009 meeting and voted to reopen the record in this matter for the limited purpose of reevaluating the location of the transmission line between Ottawa and Wedron. No other aspect of March 11, 2009 Order is to be reconsidered.

Thereafter, the following individuals and entities filed petitions to intervene: Skydive Chicago, Ottawa Airport, FRA, FFR, Matthew Nelson, Kirk Smith, Ralph Chapman, Twila Yednock, and Katie Troccoli. Pursuant to due notice, hearings were held during the reopening phase of this proceeding before a duly authorized Administrative Law Judge on October 20, 2009, January 5, February 3, and March 22, 2010 at the Commission's offices in Springfield. Petitioners, Staff, Ottawa, Resistors, Skydive Chicago, Ottawa Airport, FRA, FFR, Matthew Nelson, Kirk Smith, Ralph Chapman, Twila Yednock, and Katie Troccoli each entered an appearance. On March 16, 2010, however, Resistors submitted a letter to the Administrative Law Judge indicating that it would not be participating in the March 22, 2010 evidentiary hearing or any further aspect of this proceeding. Resistors assert that the "Commission has placed an undue and unfair burden upon [it] to defend the transmission line route

selection that is contained in the March 11, 2009 Final Order." (Resistors' letter appears on e-Docket as "Correspondence" received on March 16, 2010.)

Several witnesses offered testimony at the March 22, 2010 evidentiary hearing. Twila Yednock is a resident along the transmission line route approved in the March 11, 2009 Order. In addition to her own testimony, several others offered testimony at her request. These individuals include Peter Hopkins, a real estate appraiser who has operated Hopkins Appraisal Service in northeast Illinois since 1993, as well as Artillery Riewaldt, John and Peg Breslin, and Kenneth Nelson, homeowners in the area of the transmission line route approved in the March 11, 2009 Order. Katie Troccoli, a licensed Illinois real estate managing broker and a resident along the transmission line route approved in the March 11, 2009 Order testified on her own behalf. Ms. Troccoli also called Ted Kubinski, a Dayton, Illinois resident, and Gary Washkowiak, a Wedron resident, to testify. Geoffrey Petzel, owner of Fox River Ecological Services and the Advocacy Chairperson for FFR, testified on behalf of FFR. Kirk Smith, a commercial pilot and owner of Airsmith, Inc. d/b/a Para Concepts, testified on his own behalf. Mr. Smith also called on Lonnie Rapine, a Dayton resident and trained bird watcher, to testify. Twelve individuals testified on behalf of FRA. They include (1) Matthew Nelson, who is the Chief Operating Officer of both Skydive Chicago and Ottawa Airport, (2) Artillery Riewaldt II, a Resource Ecology Specialist, (3) Robert Speers, an Illinois attorney practicing in the areas of personal injury and wrongful death, (4) Ralph Chapman, a civil and structural engineer who lives and works in Ottawa, (5) Randall Ottinger, Director of Government Relations for the United States Parachute Association ("USPA"), (6) Terrence Ingram, a bald eagle expert and operator of The Eagle Nature Foundation, (7) Dana Kurtz, a skydiver who frequents Skydive Chicago, (8) Kale Close, a Dayton resident employed in the field of vegetation management for electric companies, (9) Randy Malcolm and (10) Jackie Franz, co-owners of River Adventures, a canoe and kayak rental business along the Fox River, (11) Hermann Reinhold, an Ottawa resident and commercial airplane and helicopter pilot, and (12) John Sabuco, President of Eldertree Envenco LLC, an Illinois environmental consulting firm. Jerry Murbarger, a Transmission Design Specialist in the Transmission Line Design Group for Ameren Services Company,³ testified on behalf of Petitioners. Staff filed no additional testimony, choosing instead to rely on what it previously submitted in this proceeding.⁴

Following the evidentiary hearing, Petitioners, Staff, FRA, Mr. Smith, Ms. Yednock, and Ms. Troccoli each submitted an Initial Brief. Petitioners and Mr. Smith each submitted a Reply Brief. Skydive Chicago, Ottawa Airport, and FRA jointly submitted a Reply Brief. A Proposed Order on Reopening was served on the parties.

³ Ameren Services is the service company subsidiary of Ameren Corporation. Ameren Services provides various services to its affiliate Ameren operating utilities, including IP.

⁴ Testimony offered by Ottawa was stricken in response to Petitioners' argument that the testimony was contrary to the aforementioned stipulation signed by Ottawa.

II. LEAST-COST AND THE OTTAWA-WEDRON ROUTE

As noted in the March 11, 2009 Order, the need to construct a transmission line between Ottawa and Wedron is not questioned. Where to construct the line, however, has been in some dispute. With the reopening of the record, the Commission now has the opportunity to evaluate to the Fox River route and State Route 71 route to determine which is least-cost under Section 8-406. Other alternative routes were suggested by Kirk Smith, but given the discussion held when the Commission reopened this matter and the time already spent, the Commission is limiting the analysis to the two routes that have been best developed in the record. All of the parties appear to agree that the proper determination of least cost is not simply a financial analysis, but involves a comprehensive consideration and balancing of the overall costs and externalities against the benefits of the route proposals. The various proposals for the Ottawa-Wedron route each have their own costs and benefits.

As noted earlier, the proposed transmission line running between Ottawa and Wedron will terminate at IP's existing Ottawa Substation on one end and the Wedron Fox River Substation on the other end. This transmission line will be approximately 9 miles in length. In their original filing, Petitioners' preferred Ottawa-Wedron route, identified as the Green Route, is depicted on AmerenIP Ex. 4.1. AmerenIP Ex. 4.1A contains a legal description of the Green Route. Petitioners' preferred route paralleled State Route 71 for the majority of its length. This route is the same route as that referred to as the State Route 71 route in this Order on Reopening. Petitioners considered two alternate routes between LaSalle and Wedron, which are also depicted on AmerenIP Ex. 4.1. AmerenIP Ex. 4.3 provides a variety of details regarding Petitioners' three routes. The route endorsed in the stipulation stems from Resistors' preferred route depicted on IL71 Resistors Ex. 1.1 attached to the direct testimony of Resistors' witness Mixon. Resistors' route parallels an operating Illinois Railnet railroad along the west bank of the Fox River between Ottawa and Wedron.

When it determined the LaSalle-Wedron route, the Commission evaluated the two competing routes using 12 criteria originally identified by Petitioners in this proceeding. The Commission will again use those criteria for purposes of evaluating the State Route 71 route and the Fox River route. The 12 criteria for route evaluation are:

1. Length of the line
2. Difficulty and cost of construction
3. Difficulty and cost of operation and maintenance
4. Environmental impacts
5. Impacts on historical resources
6. Social and land use impacts
7. Number of affected landowners and other stakeholders
8. Proximity to homes and other structures
9. Proximity to existing and planned development
10. Community acceptance

11. Visual impact
12. Presence of existing corridors

As before, the 12 criteria are listed in no particular order and none is meant to be inherently more important than the others. Rather, the outcome will result from a balancing of these 12 criteria and any other criteria identified by the parties. In some instances, the criteria may overlap one another, such as the sixth, ninth, and tenth criteria, for example. The Commission adds that in evaluating the criteria, it is clear that the intervenors are deeply concerned about the ultimate location of Petitioners' 138kV transmission line between Ottawa and Wedron. The Commission appreciates their effort and input on this challenging issue.

Before delving into the route evaluation criteria, Petitioners' unusual circumstances warrant comment. Because of its decision to enter into the stipulation following the discovery of the problem with Mr. Cruse's testimony, Petitioner's position under the stipulation conflicts with its position prior to entering into the stipulation. Petitioners therefore may find themselves defending their current position against their own arguments from earlier in this proceeding. Petitioners maintain that they are capable of building the transmission line along both routes, but given their obligations under the stipulation continue to support the Fox River route rather than their own original preferred route along State Route 71. Seldom does the Commission see a party arguing against itself in the manner Petitioners are in this case. These circumstances make it difficult for the Commission to evaluate siting criteria in the usual manner of separately presenting each party's position.

A. Length of Line

With regard to the length of the line, while it should be relatively easy to objectively determine the length of each route, it is unfortunately not entirely clear which route is technically longer. Ms. Yednock and Ms. Troccoli assert that the Fox River route is longer. Petitioners, Mr. Smith, and FRA agree that the State Route 71 route is longer. Of this latter group, Petitioners state that the State Route 71 route is approximately 9.2 miles long while the Fox River route is approximately 8.47 miles long. Mr. Smith does not question that the State Route 71 route is 9.2 miles long, but contends that the Fox River route is 9.1 miles long. Staff did not offer its own analysis of the length of the routes.

The Commission is inclined to agree with those who offered measurements of the two route lengths. In the absence of clear evidence to the contrary, the Commission finds that the State Route 71 route is longer than the Fox River route. How much longer, however, is difficult to say. Whether the State Route 71 route is one tenth of a mile or nearly three-quarters of a mile longer is not clear. Either way, the outcome of this route selection inquiry does not hinge on the difference since the difference is essentially negligible. Accordingly, neither route is preferable over the other based on this criterion alone.

B. Difficulty and Cost of Construction

In terms of construction costs, Petitioners estimate the cost of constructing the transmission line along the Fox River route to be approximately \$10 million and the cost of constructing the line along the State Route 71 route to be nearly \$9.5 million. In the earlier phase of this proceeding, Resistors witness Mixon argued that the difference in cost is less, but still conceded that the Fox River route would cost more to build. He also suggested that the cost estimates should reflect the cost of eminent domain proceedings. None of the parties participating in this phase of the proceeding have challenged Petitioners' specific construction cost estimates. Some of the parties have, however, suggested that the Fox River route would be more expensive to build given the largely inaccessible, wooded terrain.

Such terrain would make the Fox River route more difficult to construct as well, according to many parties, including Petitioners. In the earlier phase of this proceeding, Petitioners witness Murbarger testified that the Fox River route would be more difficult to construct for several reasons. With regard to that portion of the Fox River route along the Illinois Railnet railroad, Mr. Murbarger testified that the railroad "is in a heavily forested area with very little road access. Therefore, new roads would have to be built through the forested area." (AmerenIP Ex. 10.0 Revised at line 75-76) He added that a large portion of this wooded area would have to be removed to maintain proper clearance between the railroad and a transmission line. Vertical clearance along the railroad would be an issue as well, he noted, which means that poles would need to be 15 to 25 feet taller to maintain clearance above the railroad tracks. Another height issue adding to the difficulty of constructing a line along the Fox River route, according to Mr. Murbarger, is that this route crosses I-80 at "a location that will require extremely tall structures at the interstate and for several spans on both sides of the interstate." (Id. at lines 78-79) Taller structures will also be necessary, in Mr. Murbarger's opinion, where the Fox River route passes through the Village of Dayton to maintain proper clearances above homes. Mr. Murbarger stated further that the portion of the Fox River route in Ottawa is more difficult to construct than the State Route 71 route because the former would require Petitioners to overbuild an existing 34.5kV line already coupled with a 12kV distribution line. Mr. Murbarger explained that overbuilding requires heavier structures which necessitate wider and deeper pole foundations. Also in this congested area, Mr. Murbarger continued, structures would probably need to be located on the City of Ottawa's right-of-way, which is not Petitioners' preferred location for transmission lines poles. In addition, Petitioners acknowledge during the reopening phase of this proceeding that the State Route 71 route would be less difficult to construct than the Fox River route and thus concludes that this criterion favors the former route.

Intervenors opposed to the Fox River route echo Petitioners' comments about the difficulty of construction along that route. Mr. Smith offers general comments on construction difficulty. He states that routes that parallel roads are generally the least expensive to construct since physical access is easily obtained. Routes that parallel railroads in urban areas, he continues, are often quite close to roads as well. In this case, Mr. Smith observes that all routes paralleling railroads within Ottawa are very

close to roads (some of the railroad routes being physically collocated with roads for short distances), so access to the line in these areas, while not as easy as roadside routings, is relatively easy, in comparison. In the context of rural areas, Mr. Smith states that there are more considerations. If there are not nearby roads, he points out that the utility company may need to construct roads to facilitate access to the route and construction of the transmission line. Mr. Smith contends that 4.5 miles of the Fox River route lacks road access entirely. He asserts that construction of an access road along the Fox River route will be complicated by the fact that the route transverses lengthwise along a river valley, where there are areas with steep slopes and existing erosion problems. Yednock Exs. 1.16, 1.17, and 1.18 and FRA Ex. 13, Appendix 4 contain photographs depicting the erosion along the Railnet tracks.

FRA witness Chapman expresses concerns about construction difficulty as well. As an area resident familiar with the terrain of the Fox River route who happens to be a civil and structural engineer, Mr. Chapman offers his observations and concerns about building a 138kV transmission line in the area. Mr. Chapman testifies that the topography of the area varies widely--consisting of steep slopes, rock outcrops, drainage ravines, farm fields, dense forests, and several creeks. He adds that Dayton is a relatively dense collection of homes and businesses centered on the Railnet tracks. Mr. Chapman observes that the rail bed itself is very steeply sloped in many areas and several locations show signs of extensive erosion. He notes that one of the culverts running under the track collapsed in 2009 causing enough settling in the tracks that they had to be removed and rebuilt.

With regard to how the terrain would affect the design of the proposed transmission lines, Mr. Chapman testifies that typical design and construction of any substantial foundation would require a soil boring near enough to the foundation location as to represent the soil conditions that will support that foundation. With the varying terrain and geology along the Fox River route, he believes that a soil boring would be necessary at every pole location. Each of these soil borings would need to be analyzed by a soils engineer to determine the bearing capacity of the soil at each location. Compared to a relatively flat farm field where the soil conditions are less likely to change, Mr. Chapman states that the Fox River route will require many more soil borings than the State Route 71 route.

To accommodate the soil conditions along the Fox River route, Mr. Chapman understands that Petitioners will bore a hole 6.5 feet in diameter and 21.5 feet deep for each pole foundation. He states that this will require a drilling rig much bigger than the one used for boring soil samples. Because the typical concrete mixing truck carries about nine cubic yards of concrete, Mr. Chapman adds that each foundation will require three or four truckloads of concrete. Delivery of the reinforcing cage, anchor bolts, pole components, conductor, and the crane used for setting the pole, he continues, necessitates the presence of many more trucks. The need for so many trucks in an area with no or limited road access makes construction along the Fox River route very difficult compared to construction along the State Route 71 route, in Mr. Chapman's opinion.

Resistors do not address construction difficulty under this criterion in any detail. The extent of its discussion of this issue is limited to its observation that Petitioners believe that they can build the transmission line along the Fox River route if they had to. Resistors seem to rely on Petitioners' belief as evidence that the Fox River route is not more difficult to construct than the State Route 71 route, since Petitioners believe that they can construct that route too. Resistors conclude that neither route is favored by this criterion.

The Commission has considered the parties arguments on this issue. With regard to the cost of construction, the Commission observes that the cost estimates are several years old and may have changed since they were developed. The Commission also recognizes that the cost estimates may not accurately reflect the cost of acquiring property interests from landowners. As discussed in the context of the LaSalle-Wedron transmission line in the March 11, 2009 Order, in an ideal world both route cost estimates would reflect the fair cost of easements and the cost of eminent domain proceedings. Unfortunately, estimating the cost of eminent domain proceedings for either route would involve a great deal of speculation since it is not apparent which landowners along either route would refuse to sell an easement, how much a court would find their land to be worth, and what the legal costs of such proceedings would be. Accordingly, on the issue of actual construction cost, it is difficult to determine if the Fox River route or the State Route 71 route is preferable.

In terms of construction difficulty, the Commission considers physical access to the location to be an important factor. The Commission finds the aerial maps in the record useful in conjunction with the testimony on this criterion in evaluating the difficulty of construction along the routes. Where the State Route 71 route begins at the Ottawa Substation, it follows the CSX Railroad tracks for almost two miles through Ottawa. At the point along the railroad tracks where the adjacent State Route 71 turns northeast, the proposed transmission line would leave the railroad tracks and run adjacent and parallel to State Route 71 for roughly half the total length of the proposed transmission line. At this point, more than two-thirds of the route is easily accessed via existing roads. After the proposed route leaves State Route 71, it passes through slightly less than two miles of farmland. The remaining portion of the proposed route passes through forested area.

Where the Fox River route begins at the Ottawa Substation, it too follows the CSX Railroad. But before crossing the Fox River, the route turns north and enters a residential neighborhood via Champlain Street. After running along Champlain Street for approximately one half mile, the Fox River route leaves Champlain Street and follows the Railnet tracks northward for approximately 4.5 miles along the Fox River. At this point, the proposed transmission line as approved in the March 11, 2009 Order would turn east and cross the Fox River, pass through farmland and some wooded areas, and join the State Route 71 route a little less than two miles from the Wedron Fox River Substation. The Fox River route lacks road access for more than half of its

length. Much of this currently inaccessible area is in the Fox River valley, where the terrain is uneven and the soil quality is questionable.

Clearly, the State Route 71 route is closer to more existing roads than the Fox River route. Not only is the mere absence of roads a mark against the Fox River route, but the difficulty associated with clearing timber and creating roads in the Fox River valley is a problem as well. Once roads were created along this uneven terrain, the Commission is persuaded by Mr. Chapman's testimony that soil quality may necessitate more work on Petitioners' part to construct a proper foundation along the Fox River route than would be necessary along the State Route 71 route. For these and the other reasons discussed by the parties above, the Commission finds that the State Route 71 route is less difficult to construct than the Fox River route. When considering both the cost and difficulty of construction, the Commission finds overall that the State Route 71 route is preferable to the Fox River route under this criterion.

C. Difficulty and Cost of Operation and Maintenance

Another factor to consider in siting a transmission line is the anticipated cost and difficulty of operating and maintaining the line once it is constructed. Petitioners witness Murbarger testified in the earlier phase of this proceeding that because access along the Fox River route is limited, "future maintenance and storm restoration of the line [would be] very difficult." (AmerenIP Ex. 4.0 at lines 154-155) He disagreed with Resistors witness Mixon that creation of access roads during line construction removes any difficulties and cost barriers to maintenance of the Fox River route. Mr. Murbarger testified that not all access roads would remain following construction. He explained that roads put in place to construct the power line will be dirt roads, with gravel used for fill in low muddy areas. While culverts are sometimes installed to cross larger ditches, Mr. Murbarger reported that they are sometimes removed at the request of the landowner and/or other government agencies. Roads built in areas being farmed sometimes are used by the farmer, but he added that some farmers do not want those roads along or in their fields and till them up to keep trespassers out and return the area to farm ground. Mr. Murbarger thus concluded that barriers to access for maintenance can remain. During the reopening phase of this proceeding, Petitioners continue to believe that the State Route 71 route is preferable in terms of the difficulty and cost of operation and maintenance.

FRA also disagrees with Dr. Mixon's assessment that there is no material difference between the Fox River route and the State Route 71 route when it comes to the difficulty and cost of operation and maintenance. FRA witness Chapman testifies that aside from the normal maintenance required by electrical transmission poles, the pole foundations will need more careful attention due to the relative instability of the soil along the Fox River. He adds that the Railnet tracks have had several failures in the past due to the instability of the soil, particularly after a heavy rainfall. Mr. Chapman asserts that the foundations will need to be regularly checked for any changes or shifting of the surrounding soil. Staff, Ms. Troccoli, and Mr. Smith concur as well that the State Route 71 route will be less difficult and less costly to operate and maintain.

Since Skydive Chicago, based at the nearby Ottawa Airport, hosts thousands of skydivers each year, Mr. Smith also considers as an operational expense any cost associated with skydiving accidents related to the transmission line.

Dr. Mixon maintained in the earlier phase of this proceeding that neither route is preferable in light of his opinion that the differences under this criterion for either route are insignificant. In terms of cost of operation, he submitted that a shorter transmission line will be less expensive to operate, all other factors being equal. Because the two routes are very similar in length, Dr. Mixon stated that any difference in operating costs would be quite small and likely negligible. With regard to the difficulty and cost of maintenance, Dr. Mixon contended that the access roads created when the line is constructed will remove any barriers to line maintenance. He added that Petitioners inspect most transmission lines via aerial patrol (although highly populated areas may be inspected from the ground).

For the same reasons that the terrain and existing roads make the State Route 71 route easier to access, the Commission finds that the State Route 71 route will also be easier and less costly to operate and maintain. When repairs are needed, existing roads and fewer natural obstacles will facilitate such work. In emergency situations in particular, such as snow or ice storms, visually inspecting and accessing areas of the State Route 71 route will be easier and safer for utility employees. Along the Fox River route, access roads will need to be maintained so that heavy equipment such as bucket trucks, cranes, and foundation drills can reach the structure locations without becoming disabled in mud or snow or causing excess damage to the area. Having lines not visible from roadways can also lead to longer power outages in the area and higher repair costs since it will take longer to identify the location of downed lines and to reach the lines with repair equipment and materials. The Commission anticipates that easier maintenance should also translate into less costly operation and maintenance for the State Route 71 route. Therefore, the Commission finds the State Route 71 route preferable under this criterion.

D. Environmental Impacts

In the earlier phase of this proceeding, Petitioners insisted that the State Route 71 route had less of an environmental impact than the Fox River route. Petitioners witness Cruse expressed concern about the impact that construction and operation of a transmission line along the Fox River route would have on the Indiana bat.⁵ As noted in the March 11, 2009 Order in this matter, the Indiana bat is on both the federal and Illinois endangered species list. Mr. Cruse testified that the State Route 71 route would

⁵ The Indiana bat is a migratory bat species that hibernates in colonies in caves and abandoned mines during the winter. In the spring, females migrate and form maternity colonies where they bear and raise their young in certain wooded areas. Males and non-reproductive females, though, do not roost in colonies and may stay close to the site where they hibernate during the winter or migrate to summer habitat. Summer roosts are typically behind exfoliating bark of large, often dead trees. Both males and females return to their hibernacula in late summer or early fall to mate and enter hibernation. Indiana bats mainly eat insects.

require up to 12 acres of woodland clearing between Ottawa and Wedron. He observed that most of the Fox River route parallels the western bank of the Fox River through heavily wooded areas which may contain suitable Indiana bat habitat. Although there is an existing railroad corridor, he added that a substantial amount of timber clearing would still be required along this route. Mr. Cruse testified further that IDNR has raised concerns about the forest fragmentation that the Fox River route would exacerbate along the western bank of the Fox River. In addition to Indiana bat habitat, Mr. Cruse also stated that the Fox River route has the potential to impact more wetlands than the State Route 71 route. He testified that NRC completed a detailed evaluation of the wetland resources along the State Route 71 route through review of aerial photographs, National Wetlands Inventory mapping, United States Geological Survey topographical maps, and IDNR hydrography mapping. He added that wetland ecologists from NRC conducted a field wetland delineation and evaluation within the State Route 71 route.

During the reopening phase of this proceeding, however, Petitioners took the position that from an environmental standpoint, the adoption of either route is supported by record evidence. Petitioners cite Resistors witness Mixon's testimony that there would be very little difference between the two routes from the perspective of impacts on Indiana bat habitat, wetlands and waterways, and forest fragmentation. Petitioners point out that they acknowledged under cross examination that the Illinois Gap Analysis Project ("GAP") map⁶ does not reflect any potential bat habitat on either the State Route 71 route or the Fox River route. (Tr. 792-93) Petitioners also acknowledge that they have committed to take steps to mitigate impacts to adjacent wildlife and habitat areas during construction of either route.

Petitioners recognize that those opposed to the Fox River route have raised environmental concerns associated with that route. While Petitioners welcome the input of the intervenors on these issues, they state that they have met or will meet with the following agencies regarding the Fox River route to determine environmental impacts and compliance with applicable regulations: Illinois Department of Agriculture ("IDA"), Illinois Environmental Protection Agency, Illinois Department of Transportation – Division of Highways, Illinois Department of Transportation – Division of Aeronautics, USFWS, USACE, and the Federal Aviation Administration. Petitioners argue that the intervenor testimony raises issues which were either addressed in the original phase of the proceeding or fall within the jurisdiction of other federal or state authorities (such as IDNR) and so are not within the proper scope of the Commission's review. In Petitioner's opinion, the concerns of intervenors regarding environmental impacts do not warrant rejection of the Fox River route.

In support of his claim that neither route is preferable under the environmental selection criterion, Dr. Mixon discussed in the initial phase of this proceeding Indiana bat habitat, wetlands, and forest fragmentation. Dr. Mixon relies on the GAP map attached to his rebuttal testimony as IL71 Resistors Ex. 3.13 to refute Petitioners' claim (at that time) that potentially suitable Indiana bat habitat exists along the Fox River route. He related that the map does not identify any such habitat. He stated further that

⁶ The map displays data compiled by the Illinois Natural History Survey, a division of IDNR.

the only known location of the Indiana bat in LaSalle County is the Blackball Mine, which is north of the Illinois River approximately ten miles west of Ottawa. Dr. Mixon questioned NRC's method of determining the existence of potentially suitable Indiana bat habitat along the Fox River route as well. He argued that NRC's use of aerial photographs permitted it to consider only some of the factors necessary to consider before a proper habitat determination can be made. For example, Dr. Mixon stated that tree species and bark condition can not be assessed from an aerial photograph. With regard to the impact of the Fox River route on both Indiana bat habitat and wetlands, Dr. Mixon maintained that Petitioners' 100 foot wide easement is excessive and that an easement only half as wide is actually necessary along the Railnet tracks. Use of a narrower easement, he explained, would lessen any impact of the Fox River route on Indiana bat habitat and wetlands. Dr. Mixon argued as well that an aerial evaluation of wetlands is inaccurate. He also questioned whether IDNR is concerned about forest fragmentation along the Fox River. Overall, he does not believe that the State Route 71 route is any more preferable to the Fox River route in terms of environmental considerations.

Those opposed to the Fox River route that raised environmental concerns include FRA. FRA points out that Dr. Mixon is an electrical engineer with no specific environmental training. His qualifications to testify on environmental issues are limited, according to FRA, to having "investigated many transmission line siting proposals with regard to 'environmental impacts.'" (IL71 Resistors Ex. 3.0 at lines 515-517) FRA understands that Dr. Mixon based his opinions on his evaluation of the work and opinions of Petitioners' witnesses. FRA also notes that Dr. Mixon only addressed three environmental issues: Indiana bat habitat, wetlands, and forest fragmentation. FRA states further that Dr. Mixon's conclusions and assertions regarding environmental issues are suspect when one considers that one of the primary bases upon which his evaluation relies was a visit to the Fox River area in 2007. Dr. Mixon testified that during his visit he traveled closely along the Fox River route, primarily by vehicle (IL71 Resistors Ex. 1.0 at lines 92-95.) Taking into account the access issues involved with the Fox River route, FRA contends that Dr. Mixon's claims become questionable. When one considers that the great majority of the Fox River route is not accessible by vehicle at all, FRA asserts that Dr. Mixon's evaluation becomes unsupportable.

FRA also expresses concern over the impact of a transmission line along the Fox River route on bald eagles. Several witnesses testify to having seen bald eagles along the Fox River. FRA witness Ingram testifies that construction within a quarter mile and within the line of sight of an eagle's severe weather roost may drive them away. IDNR's failure to find a bald eagle nest in the direct path of the proposed line does not dissuade him from his opinion. Mr. Ingram contends that IDNR should conduct an aerial survey of the area when the trees lack leaves in order to be certain that no nests exist. In any event, the lack of a nest does not mean that bald eagles do not frequent an area, according to Mr. Ingram. He asserts that far more bald eagles winter in Illinois than nest in Illinois, so winter habitat is probably more important than nesting habitat. Mr. Ingram testifies that bald eagles roost in trees along the Fox River and feed in the open water near the Dayton hydroelectric dam in the winter. He testifies that mature trees that bald

eagles roost in or trees nearby those roosting trees should not be removed. Doing so, he continues, is detrimental to the birds' habitat and affects them at a time of the year when they are most vulnerable. Although not an attorney, Mr. Ingram also cites the USFWS' National Bald Eagle Management Guidelines ("Eagle Management Guidelines") and the Bald and Golden Eagle Protection Act ("Eagle Act"), 16 U.S.C. 668.

Mr. Ingram relates that under Section 668(a) of the Eagle Act, no one without a permit "shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner any bald eagle . . . alive or dead, or any part, nest, or egg thereof" The Eagle Act provides civil and criminal penalties. Federal regulations define "take" to mean "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb." (50 C.F.R. 668) Mr. Ingram states further that "disturb" means "to agitate or bother a bald . . . eagle to a degree that causes, or is likely to cause, based on the best scientific evidence available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior." (Id.) Mr. Ingram testifies that this definition also covers impacts that result from human-induced alterations around a previously used nest site when eagles are not present, if, upon the eagle's return, such alterations agitate or bother the eagle to a degree that injures the eagle or causes a decrease in productivity or nest abandonment.

With regard to the Eagle Management Guidelines, Mr. Ingram relates that they provide that disruption, destruction, or obstruction of roosting and foraging areas can also negatively affect bald eagles. Migrating and wintering bald eagles often congregate at specific sites for purposes of feeding and sheltering. He states that bald eagles rely on established roost sites because of their proximity to sufficient food sources. Roost sites are usually in mature trees where the eagles are somewhat sheltered from the wind and weather. According to the Eagle Management Guidelines, human activities near or within communal roost sites may prevent eagles from feeding or taking shelter, especially if there are not other undisturbed and productive feeding and roosting sites available. Mr. Ingram adds that activities that permanently alter communal roost sites and foraging areas can altogether eliminate the elements that are essential for feeding and sheltering eagles. The Eagle Management Guidelines also recommend that potential roost and nest sites be protected and preserved by retaining mature trees and old growth stands, particularly within a half mile of water sources. In addition, to avoid collisions, the Eagle Management Guidelines suggest that high voltage transmission lines be located away from nests, foraging areas, and communal roosts and otherwise employ industry-accepted best management practices to prevent birds from contacting electrical facilities.

FRA witness Sabuco asserts that there has been no evaluation of those species listed only by the State of Illinois as threatened or endangered. He contends that NRC, which provided the only biological assessment for the project site, only discussed state

threatened and endangered status if the species was first federally listed or a federal candidate species (though he believes that many of these were missed). Mr. Sabuco maintains that NRC spent time on just six species verified in the county, but not in the project area. In Table 1 in Appendix 2 attached to his testimony, he lists species verified to exist not only in LaSalle County but also in the lower Fox River basin – the subject area – by numerous, competent biologists and reported with voucher specimens to both the Illinois Natural History Survey ("INHS") where they are listed on the INHS web site, and to the Nature Serve Database, which is a national clearing house database referred to by various governmental bodies including USFWS. Mr. Sabuco states that the list contains 23 species of molluscs, fish, reptiles, birds, mammals, and plants. Of these, he observes that 11 are state-listed endangered, five are state-listed threatened, and six are on the state watch list for species of special concern. He notes that there is one species that is a federally protected species, and one federal candidate species. Except for the bald eagle, Mr. Sabuco contends that none of these were addressed by NRC.

With regard to bald eagles, Mr. Sabuco states that NRC, citing no local authorities whatsoever, and apparently making no field attempt to evaluate potential roosting trees or nest sites, concluded that the transmission line will have no effect on bald eagles. In response to this assertion by NRC, he explains that any attempt to find eagle nests must be conducted by low level fly-over in the spring before leaves appear on trees and it must be conducted by competent individuals. Mr. Sabuco asserts that NRC did not conduct such a search nor does it employ an expert of this type according to the NRC web site. To determine where eagles use trees along the river as a nighttime roost, he testifies that one must spend many hours observing every group of potential trees at the appropriate times.

Mr. Sabuco echoes Mr. Ingram's comment that any disturbance (construction activities being specifically cited in the Eagle Management Guidelines) within one quarter mile, or farther if in their line of site, will cause abandonment of a roost by bald eagles. To cause such abandonment, Mr. Sabuco observes, is a violation of the Eagle Act. In its Biological Assessment report dated January 4, 2007, Mr. Sabuco notes that NRC surmises that the clearing of trees for this project at the Fox River crossing would not significantly diminish the availability of roosting sites. In addition to the date of the report precluding the possibility of timely and appropriate habitat evaluation, he suggests that this statement betrays incredible ignorance of the habits of eagles. Also ignored in the NRC report, Mr. Sabuco continues, is the specificity and fidelity of bald eagles to particular roosting trees and/or nesting trees. He points out that one need only visit the Starved Rock Lock and Dam on the Illinois River just a few miles to the west of the confluence of the Fox and the Illinois Rivers to see that nearly all of the eagles roost in a single tree at the east end of Leopold Island (See eagle photos in Appendix 3 to FRA Ex. 13) in the river and just a few others on Plum Island. Mr. Sabuco states for NRC to believe that eagles will not be affected because trees of the type preferred by eagles are abundant in the area represents an uneducated opinion of little merit. He maintains that eagles will simply abandon an area without returning if the trees they have chosen are disturbed or eliminated. Further, NRC assumes that it is

acceptable to disturb eagle habitat if other available habitat is nearby. Mr. Sabuco reiterates that this is directly contrary to federal law. He states that it makes no difference if humans think suitable habitat exists; it is, in essence, a decision for the eagles to make.

Erosion is another environmental issue addressed by Mr. Sabuco. He is concerned about erosion because the types of soil along the Fox River route are all classified as highly erodible. Since even small excavations are difficult to stabilize (which he illustrates through the photographs of Appendix 4 to FRA Ex. 13), Mr. Sabuco questions how more extensive construction efforts like those involved in transmission line pole placement could be conducted without erosion problems. Mr. Sabuco goes on to identify seven threatened or endangered animals in the project area harmed by siltation and poor water quality resulting from erosion and runoff.

Mr. Sabuco expresses concern about forest fragmentation as well. He asserts that an uninterrupted green corridor benefits wildlife, even birds and fish whose movement is not restricted by the corridor. Splitting the corridor on the western bank of the Fox River through the construction of a transmission line would harm many species, according to Mr. Sabuco, particularly those that depend on cover when they move.

FRA witness Artillery Riewaldt II testifies that removal of so much vegetation to make way for a transmission line along the Fox River would be detrimental to the habitat of bald eagles and other birds (such as white egrets, great blue herons, and red tailed hawks) and foster soil erosion along the west bank of the river. FRA witness John Breslin testifies to having seen bald eagles in the Fox River area since 2006. FRA witnesses Malcolm and Franz also report having seen bald eagles in this general area along the Fox River. FRA witness Close describes the types of herbicides used along utility corridors.

FFR is another of the intervenors who have expressed concern about the environmental impact of a transmission line along the Fox River route. FFR witness Petzel, though not an attorney, suggests that the construction along the Fox River route runs the risk of violating the Endangered Species Act, 16 U.S.C. 1531 et seq., Eagle Act, National Environmental Policy Act ("NEPA"), 42 U.S.C. 4321 et seq., and Clean Water Act, 33 U.S.C. 1251 et seq. Mr. Petzel is specifically concerned about the Indiana bat. He testifies that he has observed several of the tree species preferred by the Indiana bat along the Railnet tracks. Because the State Route 71 route lacks similar forested area, he believes that it is preferable. With regard to bald eagles, Mr. Petzel does not expect construction along the Fox River route to destroy any existing bald eagle nests (or actual birds), but contends that it is very likely that construction will have an indirect impact on their nesting sites and habitat generally. He suggests that Petitioners study the corridor for the presence of bald eagles during their typical nesting period. If the presence of bald eagles is confirmed and the Fox River route is selected for the transmission line, Mr. Petzel observes that tree clearing should be limited to the middle of November and the end of December to avoid disturbing Indiana bats and bald eagles.

Mr. Petzel also argues that use of the Fox River route, unlike the State Route 71 route, will necessitate an Environmental Impact Statement under NEPA. He states further that wetlands are likely to be harmed by construction of a transmission line along the Fox River. Clear cutting a corridor and maintaining the corridor will, according to Mr. Petzel, contribute to runoff and sedimentation problems and introduce herbicides to the Fox River and surrounding environment. He urges the Commission to adopt the State Route 71 route to avoid the problems associated with the Fox River route.

Mr. Smith, testifying on his own behalf, also shared observations about the environment if the Fox River route is chosen. He reports that after living in the Fox River valley for nine years and working there for 13 years, he has seen several bald eagles 50 feet from the proposed transmission line route. He adds that he has seen many bald eagles feeding in the area of the Dayton hydroelectric dam throughout the year. All legal requirements aside, Mr. Smith believes that it is in the best interest of the community to route lines over farm fields rather than through a river valley. He states that farms can continue to operate below the lines, and can be compensated appropriately. In contrast, deforesting a wide swath of trees along the west bank of the Fox River, home to abundant wildlife, and especially endangered and protected species, is, in his mind, immoral and indefensible. He notes that other routes impose much less of an environmental impact and adds that IDNR shares his concern about forest fragmentation along the Fox River. (See Petitioners Ex. 11.03 and Tr. at 1296) Staff notes as well that IDNR is concerned about forest fragmentation.

Other witnesses testify to having seen bald eagles along the Fox River as well. Mr. Rapine, a Dayton resident, testifies that he has observed as many as 15 eagles at one time roosting along the Fox River near Dayton. Smith Ex. 2.1 consists of an aerial photograph on which Mr. Rapine has identified the areas he has seen bald eagles. Mr. Kubinski, a Dayton resident since 1981 and a resident of Ottawa from 1968 to 1981, testifies that the area of the Fox River south of the Dayton hydroelectric dam is frequented by bald eagles in the winter. Mr. Washkowiak testifies that he works in Wedron and has observed eagle nests along the Fox River south of Wedron. Ms. Troccoli and Ms. Yednock also express concern about the impact of a transmission line on eagles and other wildlife along the Fox River.

The Commission wishes to limit the environmental impacts of any transmission line it approves. As a starting point, perhaps the easiest inquiry to conduct is which of the two routes has the greater impact on forested land. Petitioners indicate that approximately 12 acres of trees would have to be cleared along the State Route 71 route. Most, if not all, of the trees to be cleared are at the northern end of the State Route 71 route, north of the point where the transmission line would leave the highway. In this area, the line passes through a farm field, crosses through less than a half mile of wooded area, passes through several more farm fields, and then crosses through a short span of wooded area before terminating at the Wedron Fox River Substation. Aerial photographs in the record indicate that much more than 12 acres of timber would have to be cleared along the Fox River route if it were adopted. Clearly, the Fox River

route would contribute to forest fragmentation, and the associated problems, to a much greater degree than the State Route 71 route. To the extent that the wooded areas serve as habitat for various species, the Fox River route would be more detrimental in terms of environmental impact.

The two species that have garnered the most attention in this proceeding are the Indiana bat and bald eagle. From the competing testimony, it is not clear whether the western bank of the Fox River contains suitable habitat for Indiana bats. While witness observations and the character of the terrain suggest that it is possible, the GAP map indicates otherwise. When an alternative exists, however, prudence warrants that the Commission errs on the side of caution and preserve habitat. Therefore, the Commission finds that the State Route 71 route is preferable at least as far as the endangered Indiana bat is concerned.

In contrast to the Indiana bat, it is undisputed that bald eagles inhabit the Fox River area. Several witnesses testify to having seen bald eagles throughout the year along the area of the Fox River where Resistors propose that Petitioners build the transmission line. What is in dispute is whether construction of the transmission line in this location would disturb the eagles. Mr. Ingram and Mr. Sabuco both testify that disturbances in the areas where eagles roost may drive them from the area. They also indicate that removal of a preferred roosting tree, or trees sheltering the preferred roosting tree, does not mean the eagle will just move to the next tree over. Again, the eagle(s) may simply abandon the area. Moreover, directing Petitioners to build a transmission line frequented by bald eagles would appear to put Petitioners in jeopardy of violating the Eagle Act in the absence of a permit under that statute. An alternative exists here that does not similarly impact bald eagles. Accordingly, the Commission finds that the State Route 71 route is preferable given the presence of bald eagles along the Fox River route.

Furthermore, the discussion of bald eagles in the area of the Fox River route leads the Commission to question how Petitioners failed to appreciate the significance of the bald eagles in the area of a transmission line. This fact and Petitioners' apparent failure to consider several other endangered/threatened species, as indicated by Mr. Sabuco, troubles the Commission. The Commission strongly cautions Petitioners to be more thorough in future transmission line dockets. A better of appreciation of how the Fox River route would affect bald eagles, for example, may have saved all involved considerable time and resources in this proceeding.

Wetlands and waterways are another area of concern under this route selection criterion. The record supports the finding that the Fox River route impacts wetlands and waterways more than the State Route 71 route. While the trees themselves have value, they can also play a valuable role in protecting wetlands and waterways. Clear cutting the corridor along the Fox River route will contribute to erosion along the west bank of the river and sedimentation of the river. Rain water runoff is also likely to carry herbicides into the river from time to time. While the Commission recognizes that Petitioners could mitigate these impacts, mitigation is not the same as avoidance and

prevention. The State Route 71 route is largely along farm fields, where such concerns are significantly less.

Additionally, the Commission notes that Petitioners suggest that some of the intervenors' concerns are not within the proper scope of the Commission's review. The Commission recognizes that the federal environmental statutes referenced above, such as the Eagle Act, are not within its jurisdiction to enforce. The Commission asks the parties to consider, however, what would happen if the Commission ignored other state and federal laws when siting a transmission line only to have another state or federal agency enforcing those laws block the transmission line at that location. In all likelihood, the Commission would be revisiting the siting question. Common sense and efficient administration warrant that the Commission bears in mind other relevant statutes when they are known.

Taking all of the arguments regarding the environmental impact of the Fox River route and the State Rate 71 route into account, the Commission finds that the State Route 71 route has less of an environmental impact.

E. Impacts on Historical Resources

Under the Illinois State Agency Historic Resources Preservation Act, 20 ILCS 3420 et seq., and the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., the IHPA is tasked with reviewing and commenting on the effects any proposed route would have on historical/cultural resources. Petitioners report that based upon the routes submitted, the IHPA has determined that the project would not affect any historic properties. Petitioners, as well as FRA, therefore conclude that the two routes are comparable from a historical and cultural resource prospective. Petitioners supported the same position in the earlier phase of this proceeding.

Resistors witness Mixon argues that the State Route 71 route would have more of an impact on historical resources than the Fox River route. Dr. Mixon explains that a transmission line along the State Route 71 route would span the Trumbo family farm for approximately one quarter of a mile. He notes that IDA designated the Trumbo farm as a Sesquicentennial Farm in March of 2007. The roughly 400 acre farm is part of an original homestead settled in 1830. The transmission line would be located on the Trumbo farm on the west side of State Route 71 just north of the intersection with 31st Road. Dr. Mixon adds that in Docket No. 06-0179, IP stated that it has a policy of avoiding farms that have Centennial or Sesquicentennial Farm designation from IDA because of their historic value.

Mr. Smith ultimately concludes as well that neither route is preferable under this historic impact criterion. Before coming to this conclusion, however, he notes that his own residence, which is roughly 35 feet from the Fox River route, is the oldest home in the area, dating to approximately the same time that the Trumbo farm was established. Mr. Smith suggests that perhaps his historic home should be treated in a way similar to the Trumbo farm. He notes further that there is no indication of whether a transmission

line along the State Route 71 route would come close to any structures on the Trumbo farm. In the absence of any evidence on the proximity of the line to any structures on the Trumbo farm, he does not consider either route more favorable under this criterion.

Ms. Yednock challenges the significance of the Sesquicentennial Farm designation touted by Dr. Mixon. Because Dayton is a pioneer village, she asserts that many of the farmsteads in the area share the same heritage. Ms. Yednock does not seem to believe that neither the Fox River route nor the State Route 71 route is preferable under the historic impact criterion.

The Commission has considered the parties' arguments and does not consider either route preferable under the historic impact criterion. The Trumbo farm Sesquicentennial Farm designation in and of itself carries little weight given the circumstances. For instance, Petitioners report that the Trumbo farm is split by State Route 71. The farmstead is located on the west side of the highway and set back a short distance from the road. The proposed transmission line would be located on the east side of the highway and not near any historic structures, according to Petitioners. Other structures and parcels in the area appear to have similar historical significance. The Commission also observes that the Trumbo farm did not receive its Sesquicentennial Farm designation until after Petitioners identified State Route 71 as a possible path for a transmission line.

F. Social and Land Use Impacts

In the earlier phase of this proceeding, Petitioners argued that the State Route 71 route was preferable to the Fox River route with respect to social and land use impacts. Among their arguments against the Fox River route was Petitioners' assertion that it was inconsistent with Ottawa's comprehensive plan. Since the signing of the aforementioned stipulation, however, Petitioners have changed their position. They acknowledge some intervenors' concerns that the Fox River route will adversely impact the business of the Ottawa Airport and Skydive Chicago. But they nevertheless argue that the Fox River route is preferable over the State Route 71 route. Petitioners rely on the testimony of Resistor witness Joseph Abel⁷ to support their position on reopening. Mr. Abel testified in the original phase of this proceeding that the Fox River route is preferable because it is consistent with Ottawa's comprehensive plan to develop a gateway into the city along State Route 71, a "highway greenbelt," and residential developments in the area where Petitioners proposes to place the transmission line. Mr. Abel added that the Fox River route is preferable because it calls for the construction of the transmission line in an existing utility corridor (the railroad tracks) instead of creating a utility corridor along the highway.

In addition to the Resistor's arguments cited by Petitioners, Resistor witness Mixon also argued that the State Route 71 route would impact a larger amount of cropland, pasture land, and road right-of-way than the Fox River route. He related that

⁷ Joseph Abel is the president and owner of Joseph H. Abel & Associates, a land use planning, zoning, and economic development consulting firm.

the LaSalle County Farm Bureau passed a resolution opposing the State Route 71 route because of its impact on agricultural land. Dr. Mixon also testified that the State Route 71 route would have a more significant impact on existing and planned development and opined that it would encounter greater community opposition as well.

None of the intervenors active in this phase of the proceeding believe that the social and land use impacts favor the Fox River route. In fact, each believes that the State Route 71 route is preferable under this criterion. FRA witness Artillery Riewaldt II asserts that the section of the Fox River between Ottawa and Wedron is a beautiful and relatively pristine area, and is enjoyed by many individuals for canoeing, fishing, bird watching, and general leisure. He laments that loss of recreational resources that he believes will occur if a transmission line is constructed along the Fox River and negatively impacts those features that attract people to the area. Ms. Yednock and Ms. Troccoli also decry the loss of green space and habitat.

Beyond any concern over the economic impact associated with less attractive recreational opportunities, several intervenors have expressed concern over the impact of a transmission line on two area aviation businesses. East of the Fox River and approximately one mile north of Dayton is the Ottawa Airport, home of Skydive Chicago. FRA witness Matthew Nelson describes the Ottawa Airport as covering 220 acres and having three runways. The primary runway is a 4,200 feet paved runway running roughly parallel to the Fox River. The other runways are grass runways; one runs 3,200 feet long roughly perpendicular to the Fox River and ending approximately 700 feet from the Fox River; the other grass runway is 2,500 feet long and runs perpendicular to the first grass runway. The three runways form the shape of a right triangle, with the right angle corner being closest to the Fox River and formed by the two grass runways. An aerial photograph of the airport is attached to Mr. Nelson's testimony, FRA Ex. 3. He relates that the airport accommodates approximately 6,000 take offs and landings each year. Of those 6,000 take offs and landings, Mr. Nelson states that about 350 are unrelated to skydiving.

Mr. Nelson testifies that his father, Roger Nelson, built and opened the Ottawa Airport in 1996 to house Skydive Chicago. According to Mr. Nelson, Skydive Chicago is the premier skydiving center in the Midwest, occupying nearly the entire main 35,000 square foot hanger at the airport. The hanger contains a restaurant, skydiving manifest, various offices, and classrooms. Mr. Nelson states that Skydive Chicago attracts approximately 25,000 individuals to Ottawa each year. He adds that Skydive Chicago hosted the USPA National Competition in 2003 and 2007, and is scheduled to host the competition again in 2010. According to Mr. Nelson, the competition draws approximately 1,200 people to the area that spend money in local restaurants, hotels, gas stations, and bars. The same establishments benefit from the presence of Skydive Chicago each August, he continues, when it hosts "Summer Fest," which draws approximately 1,000 people. FRA witness Ottinger of the USPA adds that Skydive Chicago is one of the top ten busiest drop zones by number of jumps per year among the roughly 220 independent drop zone businesses in the United States.

Mr. Nelson, Mr. Smith, and others are concerned that construction of a transmission line along the Fox River will create an unreasonable hazard to pilots and aircraft passengers. Mr. Smith and FRA witness Reinhold are both pilots and express concern about the close proximity of a 138kV transmission line to the runways at the Ottawa Airport. The line would be within the aforementioned 700 feet between the Fox River and the closest runway. Depending on the different scenarios that may occur when flying (i.e.: engine failure, low visibility, night flying, etc.), the pilots indicate that a transmission line at this location impairs safety. Mr. Smith offers testimony on his personal experiences with aborted take offs at the Ottawa Airport and how a transmission line at the proposed location would have negatively affected his options.

Mr. Smith and others also believe that a transmission line at this location would put skydivers at risk. Mr. Ottinger explains skydiving terminology and the mechanics of flying a parachute. Mr. Smith indicates that if a skydiver found himself east of the primary landing area, there are only a few clear areas available for landing. He states that installation of a transmission line as proposed, however, would make these areas unsafe. The only other option, Mr. Smith continues, is landing in the river, which he states carries the risk of drowning. He shares stories of his own experiences and that of another when parachute landings occurred outside of the primary landing area and near where the transmission line would be.

FRA witness Kurtz shares her experience of having to make a difficult decision in flight of where to land after the wind blew her from the primary landing area at Skydive Chicago. After unexpected winds blew her off course, she had to decide whether to land in the Fox River or in the backyard of a home that is located between the river and the designated landing area. Rather than risk drowning in the Fox River, Ms. Kurtz chose to land in the backyard and experienced a broken pelvis. Ms. Kurtz, an experienced skydiver, believes that had she chose to land in the river and had a 138kV transmission line been where Petitioners propose to construct one, she may have very well landed in the power lines because the change in wind speed closer to the ground would have led her into the lines.

FRA witness Speers offers testimony from the perspective of an attorney practicing in the areas of personal injury and wrongful death. He believes that it is objectively reasonable to expect that an injury would occur if Petitioners installed a transmission line in a location where skydivers are known to descend and land and where other users of Ottawa Airport are known to travel. If a skydiver or other user of the airport were to come into contact with the transmission lines, Mr. Speers states further that the likelihood of injury or death would seem high (from electrocution or entanglement). He concludes that Petitioners would likely expose themselves to liability if they locate a transmission line near Ottawa Airport as proposed.

Mr. Nelson and Mr. Smith fear that the presence of a transmission line along the Fox River would prove too dangerous, and may very well result in the closing of Skydive Chicago and Ottawa Airport. If that happens, FRA witnesses Malcolm and Franz fear that their kayak rental business located at the airport, River Adventures, Inc., would also

close. They state that many of their customers are Skydive Chicago customers. Intervenor's opposed to the Fox River route are concerned about the social impact of the closing of these businesses on the Ottawa economy.

Another alleged aviation hazard that would be created by a transmission line along the Fox River route pertains to the Ottawa Regional Hospital and Healthcare Center ("Ottawa Hospital"). Ottawa Hospital is located in Ottawa at a bend in the Fox River. The Fox River route is essentially across the river from Ottawa Hospital. Yednock Ex. 1.13 consists of an aerial photograph of Ottawa Hospital with the transmission line routes delineated. What concerns several of the intervenors is that Ottawa Hospital maintains a helipad for medevac helicopters. They fear that helicopters ferrying the injured at all hours of the day in all types of weather will collide with the 90 feet tall transmission line. Ms. Yednock, Ms. Troccoli, Mr. Riewaldt (father of Artillery Riewaldt II), Mr. and Mrs. Breslin, Mr. Kenneth Nelson, and Mr. Reinhold each express concerns about helicopters colliding with the proposed transmission line along Champlain Street. Mr. Reinhold adds that he piloted a helicopter on a practice approach over the area of the proposed transmission lines into the helipad at Ottawa Hospital. Based on his experience as a pilot, he opines that the presence of transmission lines at the proposed location will make for a very tight and dangerous approach for any helicopter in any conditions. He testifies that the fact that helicopters will be flying in and out in all weather conditions, day and night, will make the approach even more dangerous. He urges the Commission to bear in mind that the wires will be virtually invisible, requiring pilots to estimate the position of the wires based on the position of poles and insulators. Mr. Reinhold states that flights will often be carrying patients with emergency conditions, so time will be of the essence. His final comment is that wires are the number one cause of helicopter crashes.

FRA also offers copies of documents from Ottawa and Dayton Township. FRA Ex. 1 is a copy of Ottawa's Resolution No. 89-2009, adopted August 18, 2009. This resolution repeals Ottawa's earlier Resolution No. 83-2007 supporting the stipulation. FRA Ex. 2 is a copy of Dayton Township's Resolution No. 08-20-09, adopted August 20, 2009. This resolution declares the Township's opposition to a transmission line along the Fox River.

No party has suggested that businesses exist along the State Route 71 route that would be affected by a transmission line in a manner similar to that of the businesses at the Ottawa Airport. Nor has anyone suggested that the State Route 71 route poses risks to aviation the way the Fox River route does.

Considering on balance the social and land use impacts of the two routes, the Commission finds that the State Route 71 route is preferable to the Fox River route. The safety of pilots, aircraft passengers, skydivers, and those on the ground below them are certainly legitimate concerns. Given the existing land uses, the presence of a transmission line along the Fox River route clearly poses more of a safety threat to such persons than a line along the State Route 71 route. The economic harm that may result

from the loss of businesses along the Fox River route is a legitimate concern as well. The absence of comparable harm along the State Route 71 route is noteworthy.

How Petitioners failed to consider the safety impact of a transmission line near a hospital helipad, airport, and skydiving operation when entering into the stipulation is perplexing. Even if there was no opposition at the time the stipulation was entered into, the notion that a 138kV transmission line is compatible with such aviation activities is puzzling. While other factors are certainly pertinent in evaluating transmission line sites, there is no indication that Petitioners considered the impact of their project on the safety of flight crews, skydivers, and those beneath them when they determined that a transmission line along this route is reasonable. The Commission admonishes Petitioners to be more attentive to safety concerns when evaluating routes for transmission lines in the future

The most significant impact along the State Route 71 route appears to be on agriculture. To the extent that a transmission line along the State Route 71 route would be constructed in farm fields, the Commission recognizes that such construction would be inconsistent with IP's Agricultural Impact Mitigation Agreement with the IDA. IP entered into this agreement pursuant to the Farmland Preservation Act, 505 ILCS 75/1, and the Commission's Agricultural Land Preservation Policy. The effect of this agreement is to minimize the loss of agricultural production land and to mitigate the effect on agricultural uses when avoidance is not feasible. The Commission also recognizes, however, that the majority of the easement area will only have overhanging wires; farming within the associated Safety and Exclusion Zones is not prohibited. The Commission is not obligated to avoid farm land at all cost, rather, it need only take steps to mitigate agricultural impacts where a line is placed in an agricultural setting. Compared to the Fox River route, negative social and land use impacts are more easily addressed and mitigated along the State Route 71 route.

With regard to Ottawa's comprehensive plan, both routes seem to conflict with portions of the plan. Those aspects of the comprehensive plan calling for the preservation and conservation of open space and recreational areas seem to conflict with the Fox River route. Those aspects of the comprehensive plan calling for the establishment of a green gateway into the city along State Route 71 seem to conflict with the State Route 71 route. From the Commission's perspective, Ottawa's comprehensive plan can not be said to clearly favor either route.

G. Number of Affected Landowners and Other Stakeholders

With regard to the number of affected landowners and other stakeholders, Petitioners report that there are fewer affected landowners and parcels along the State Route 71 route. Specifically, they relate that the State Route 71 route would affect 77 landowners and 116 parcels of land, while the Fox River route would affect approximately 82 landowners and 139 parcels of land. During the initial phase of this proceeding, Petitioners concluded that these numbers support adoption of the State Route 71 route. After signing the stipulation, Petitioners contend that these differences

are not material, and therefore neither route is preferable with regard to the number of landowners and parcels. In the earlier phase of this proceeding, Resistors witness Mixon acknowledged that the State Route 71 route has a slight numeric advantage under this criterion. At the same time, however, he argued that when one considers all of the affected stakeholders, neither route is preferable. Staff, FRA, Mr. Smith, Ms. Troccoli, and Ms. Yednock all agree that the State Route 71 route affects fewer landowners and parcels. Mr. Smith also opines that when one considers all users of the Ottawa Airport and Fox River valley, far more stakeholders are affected by the Fox River route.

The Commission recognizes that all parties agree that the State Route 71 route affects fewer landowners and parcels than the Fox River route. The difference in the number of landowners affected, however, is quite small (5) and so under this factor alone neither route seems preferable. The fact that there are 23 more parcels involved with the Fox River route is more significant, but not overwhelmingly so. The impact of the route selection on the amorphous category of stakeholders is arguably the deciding factor under this criterion. Resistors' reference to stakeholders seems to encompass all those subject to Ottawa's comprehensive plan, but particularly those who use State Route 71 to access the city. Resistors' concerns appear to focus on aesthetics and the notion of using State Route 71 as the "gateway" into Ottawa. Mr. Smith's reference to stakeholders includes area residents and visitors who make use of the Fox River valley for recreational purposes. The Commission notes that another stakeholder affected by the route selection is Ottawa Hospital with its helipad. Balancing all of these considerations leads the Commission to find that the pendulum swings in favor of construction along the State Route 71 route.

H. Proximity to Homes and Other Structures

With regard to proximity to homes and other structures, Petitioners state that the Fox River route is closer to more than the State Route 71 route. Within 200 feet of the State Route 71 route's centerline, Petitioners observe that there are 88 occupied houses, 57 garage and farm buildings, 1 grain bin, and 66 other structures, such as small sheds, sign bridges, billboards/large signs, cell phone towers, electrical distribution substations, and natural gas pipeline pump stations. Within 200 feet of the Fox River route's centerline, Petitioners report that there are 155 occupied houses, 72 garage and farm buildings, 5 grain bins, and 56 other structures. These numbers are reflected in the following table:

	State Route 71 route		Fox River route
Occupied Houses	88		155
Garage & Farm Buildings	57		72
Grain Bins	1		5
Other	66		56
Total	212		288

In the initial phase of this proceeding, Petitioners argued that these numbers support a finding that the State Route 71 route is preferable under this criterion. Petitioners stood by this position even after Resistors pointed out that many of the structures identified along the Fox River route are campsites, cabins, and other seasonal shelters. Upon the reopening of the record, however, Petitioners cite the seasonal nature of some of the structures for the basis of its conclusion that neither route is the preferred route based on proximity to homes and other structures. Resistors witness Mixon, on the other hand, concludes that the State Route 71 route is slightly preferable under this criterion in light of the number structures near each route. (IL71 Resistors Ex. 3.0 at lines 225-226)

Ms. Troccoli, Ms. Yednock, and Mr. Smith support a finding that the State Route 71 route is preferable under this criterion. Mr. Smith notes that there are more than 40% fewer occupied homes within 200 feet of the State Route 71 route compared to the Fox River route. He notes that the first mile of both routes follows the same path passing near the same 68 homes. Removing those 68 homes common to both routes means that the State Route 71 route passes by an additional 20 occupied houses while the Fox River route passes by an additional 87. Ms. Smith states that using these numbers indicates that there are more than 75% more occupied houses along the Fox River route. He understands that the Commission traditionally places a lot of importance on proximity to homes; therefore Mr. Smith concludes that the State Route 71 route is the more favorable route.

The Commission continues to believe that under this criterion, proximity to occupied homes carries the most weight. Looking at both the number of occupied homes as well as the number of structures overall indicates that the State Route 71 route has less of an impact on homes and structures and is therefore preferable. Even Resistors acknowledge that the State Route 71 route is favorable, albeit slightly, to the Fox River route under this criterion.

I. Proximity to Existing and Planned Development

When considering each route's proximity to existing and planned development, Petitioners argued in the initial phase of this proceeding that neither route held an advantage over the other. With regard to the State Route 71 route, the planned Fox River Woods development was the focus under this criterion. Resistors witness Abel describes the development as covering 400 acres southwest of the intersection of State Route 71 and I-80, just east of the Fox River. The plan for the development includes 1,200 dwelling units and 40 commercial areas. Petitioners witness Murbarger indicates that the transmission line would be on the east side of the highway, across from the development (AmerenIP Ex. 10.0 Revised at lines 268-269). But from the drawings in the record (see for example AmerenIP Ex. 4.1), it appears that the State Route 71 route would at this point run along the west side of the highway, adjacent to the development for approximately one mile. Petitioners disagreed with Resistors that a transmission line along this route would constitute a per se adverse impact on the development. After reviewing the drawings for the development, Petitioners observed that twelve individual

parcels and seven multi-family residences would border the eastern edge of the development along the transmission line. Petitioners stated further, however, that from the western edge of the development along the Fox River, thirty parcels would have a direct view of a transmission line along the western bank of the river if the Commission adopted the Fox River route. For this reason, Petitioners concluded that the Fox River route would have a similar if not greater impact on the Fox River Woods development than the State Route 71 route. Petitioners also argued that there is no evidentiary basis for Resistors' assertion that the development would not proceed if the transmission line is built along the State Route 71 route.

After entering into the stipulation to avoid concerns with Petitioners witness Cruse's testimony, however, Petitioners now use the same facts to argue that the State Route 71 route will have a greater impact on existing and planned development. Petitioners state that the most likely future use of the land along the Fox River route will continue to be what it currently is – railroad right of way. On the other hand, Petitioners assert that the State Route 71 route would likely have a major impact on the Fox River Woods development, adding that it would almost directly parallel the development for one mile, including all main entrances to the development. Petitioners now also cite Resistors' claim that the development may not go forward, as proposed, if the transmission lines are built along the State Route 71 route. As a result, Petitioners now conclude that the State Route 71 route will have a substantially more significant effect on existing and planned development than the Fox River route, and so this criterion favors the Fox River route.

In addition to the arguments discussed above, Resistors witness Mixon also found Petitioners' claim of an impact on the Fox River Woods development from the Fox River route ridiculous. Dr. Mixon insisted in the earlier phase of this proceeding that there is no way to mitigate the visual impact of a transmission line along the highway adjacent to the development. He claimed that the trees along the Fox River route, however, may block the view of a transmission line along the more distant Fox River route. He recommended further that the poles/towers should be made of darkened or low-reflective materials that would better blend with the landscape, rather than galvanized steel structures. For all of these reasons, Resistors concluded that the State Route 71 route is preferable under this criterion.

Mr. Smith maintains that the State Route 71 route is preferable under this criterion. He notes that Resistors relied heavily on the planned Fox River Woods development but ignored the existing developments along Champlain Street in Ottawa (originating in the 1800s), in unincorporated Dayton (originating in 1830), and in the Sky Village subdivision (originating in 1996). Mr. Smith observes further that the planned Fox River Woods development will be affected by both routes as originally suggested by Petitioners. All considered, Mr. Smith believes that existing developments should take precedence over future plans that may or may not come to pass, and can be accommodated, to a reasonable extent, by variations in the pole placement or design or the installation of visual barriers. He insists that the implication that a tree lined rail

corridor has the same effect on developments in the area as a deforested swath 50 to 150 feet wide is simply not true.

FRA acknowledges Resistors' claim that the State Route 71 route would have a significant impact on the Fox River Woods development. Other than identify the location of the transmission line in relation to the development, however, FRA points out that Resistors did not present any evidence addressing why or how a transmission line along State Route 71 would adversely affect development in the area. Staff makes the same observation about Resistors' claim. Ms. Yednock and Ms. Troccoli also believe that this criterion favors the State Route 71 route.

This criterion overlaps to a large extent with the question of social and land use impacts. The Commission recognizes that construction of a transmission line will quite possibly impact to some degree any plans to develop land, the Fox River Woods development is no exception. But in evaluating the routes under this criterion, existing development must be considered as well. The record supports a finding that more existing homes and businesses will be impacted, to varying degrees, by construction of a transmission line along the Fox River route. The Commission therefore concludes that the State Route 71 route is preferable under this criterion.

J. Community Acceptance

In the initial phase of this docket, Petitioners asserted that there can be no argument that the community uniformly accepts or opposes any route. Petitioners also suggested that moving the route to another location does not resolve any problems since the property owners along the new route will consider it controversial as well. They therefore concluded that neither of the two contemplated routes is preferable in terms of community acceptance. Petitioners have not changed their position now that the record has been reopened. They view the arguments of the more recent intervenors as validation of their position on this criterion.

At the time of Resistors' involvement in this proceeding, no one had intervened to oppose the Fox River route. Resistors also noted that the LaSalle County Farm Bureau passed a resolution opposing the State Route 71 route in light of its impact on agricultural land. Resistors therefore concluded that the preferred route under this criterion is the Fox River route.

FRA asserts that it can be reasonably argued that all intervenors in the instant proceeding are motivated, if only in part, by their own self interest. Community acceptance, FRA states, can not therefore be based upon what any particular group or individual objects to. Citing FRA Exs. 1 and 2, FRA notes that Ottawa and Dayton Township have both passed resolutions objecting to the Fox River route. To the extent that these government bodies speak for the community, FRA contends that it can be said that there is no general community acceptance of the Fox River route.

Mr. Smith states that despite Petitioners' early attempts to quell concern amongst the community by assuring people that the State Route 71 route would be chosen, the community has more recently realized the error in trusting these statements, and now loudly prefers the State Route 71 route. He adds that Petitioners report that feedback in their public forums raised more concerns about the Fox River route than any other, especially in the vicinity of Dayton. Mr. Smith also cites the Ottawa and Dayton Township resolutions concerning the Fox River route. He notes that during this phase of this proceeding, no publicly elected body has taken a position in favor of the Fox River route. In addition, Ms. Yednock contends that the community accepts electric lines along a highway, and adds that it is quite common to find such lines along roadways.

A broad view of the parties' positions indicates to the Commission that neither route is generally acceptable to the area community. Parties for and against each route raise varying concerns; each of which is valid from their own perspective. The Commission therefore concludes that neither route is preferable under this criterion.

K. Visual Impact

Petitioners' initial position in this proceeding was that a transmission line would have a greater visual impact along the Fox River than it would along State Route 71. Petitioners acknowledged that there will be a visual impact from any route that is selected, but argued that the Fox River route would experience a greater impact for several reasons. First, Petitioners noted that the Fox River route would traverse forested land along the Fox River. Second, the Fox River route would impact land designated by the Ottawa comprehensive plan as open space. Third, poles along the Fox River route would be taller (and in some areas much taller) than poles along the State Route 71 route. Fourth, more residents of the Fox River Woods development would have a view of a transmission line along the river than they would of one along the highway. Petitioners added that to lessen the visual impact they have chosen a line configuration of self-supporting, single-shaft steel poles instead of guyed, wooden H-frame structures that have been historically constructed in this area. Although Petitioners did not believe that the visual impact would be significant, they still found the State Route 71 route preferable under this criterion. After entering into the stipulation, however, Petitioners used the same facts to argue that the visual impact is virtually the same for either route.

Resistors opined that the State Route 71 route would suffer from a greater visual impact than the Fox River route. The basic premise of Resistors' position is that visual impact lessens as distance between the viewer and object viewed increases. Resistors essentially argued that because more people will be traveling along State Route 71 than the Fox River, more people will be visually impacted by a transmission line along the highway than one along the river.

In addition to the clear cutting and pole height along the Fox River route, FRA asserts that this route would also have a more dramatic visual impact for the simple

reason that more homes are closer to this route than the State Route 71 route. FRA further contends that power lines introduced into a natural setting would have more of a negative visual impact than lines constructed along a rural highway. FRA therefore supports adoption of the State Route 71 route.

FRR witness Petzel testifies that a transmission line along the Fox River will have an adverse impact on the visual enjoyment of users of the Fox River by replacing trees and animal habitat with utility poles. He asserts that the scenic quality of the area will be forever altered by construction of a transmission line along the Fox River. In contrast, Mr. Petzel avers that State Route 71 will not be as detrimentally affected by the presence of a transmission line.

For his part, Mr. Smith observes that Resistors base much of its concerns on the visual impact along State Route 71. This highway, he continues, is currently adjacent to existing commercial, residential, mining, and agricultural land uses. Mr. Smith states further that he finds Resistors' concerns about the proposed Fox River Woods development confusing since the subdivision has numerous river view lots in clear view of the Fox River route. Mr. Smith relates that all other testimony seems much more concerned with the impact on the Fox River valley, a largely undeveloped natural setting surrounded by miles of cleared farm fields, the communities of Ottawa and Dayton, and other developed lands. He also contends that a simple comparison of the amount of land to be clear cut along the Fox River route versus the State Route 71 route is enough to realize that the Fox River route will suffer from a much greater visual impact.

Ms. Yednock favors the State Route 71 route as well. She argues that what little remaining forest is left in Illinois should be preserved and not clear cut to make way for a transmission line that could easily be constructed elsewhere. She contends that Ottawa could still create a scenic greenway into the city along State Route 71 even with the transmission line there. What could not be done, she insists, is replace the forest that Petitioners would destroy if they built the line along the Fox River. Ms. Troccoli agrees that the Fox River route would entail a greater visual impact than the State Route 71 route.

No party has claimed that either of the proposed transmission line routes will not have a visual impact. The question for the Commission to answer is whether one of the routes has a greater visual impact than the other. Having reviewed the record, the Commission finds that construction and operation of a transmission line along the Fox River would have a greater impact than doing so would along State Route 71. To be clear, the Commission appreciates Ottawa's desire to create and maintain an attractive entryway into the city. The presence of a 138kV transmission line along State Route 71 as it enters Ottawa will surely alter the scene. But at the same time, from simply an aesthetic perspective, clear cutting several acres of trees along a river corridor frequently used for recreational purposes would produce a greater negative impact on the natural scenery. Stated another way, the landscape along the State Route 71 route has already been altered by man's hand more so than the Fox River route. If it can be said that either route will have less of a visual impact, the Commission finds that the

State Route 71 route is preferable to the Fox River route under this criterion. The Commission will hold Petitioners to their commitment to use "more attractive" poles.

L. Presence of Existing Corridors

In the earlier phase of this proceeding, Petitioners argued that neither route was preferable over the other with regard to existing corridors. Petitioners noted that a substantial majority of either one of the proposed routes is adjacent or parallel to one or more types of existing corridor. The State Route 71 route follows State Route 71 for much of its length while the Fox River route follows the Railnet tracks for much of its length. Now, however, Petitioners accept Resistors' claim that the State Route 71 route will eventually parallel a "major new development area," (IL71 Resistors Ex. 1.0 at line 611) and contend that this criterion favors the adoption of the Fox River route by a narrow margin.

Although the Fox River route parallels a railroad corridor, FRA states that the construction of this route would require a substantial amount of tree clearing. FRA adds that the limited access to this corridor would wreak havoc with the maintenance of the lines in this area during emergencies. On the other hand, FRA points out that the State Route 71 route offers direct access to the line at all times. For these reasons, FRA maintains that the State Route 71 route is preferable under this criterion.

Several of the other intervenors contend that the State Route 71 route is preferable under this criterion as well. Mr. Smith observes that the rural sections of these routes both pass largely along existing corridors. But he notes that the generally clear and accessible nature of a state highway versus a largely wooded, inaccessible railroad corridor makes the existing corridors along the State Route 71 route much better suited for a transmission line. Ms. Yednock seems to suggest that the Railnet track deserves little consideration as a corridor since it is practically invisible from the river. Ms. Troccoli finds the Railnet corridor a poor choice for a variety of reasons, which have been discussed above.

The Commission finds that the existing transportation corridors running along large portions of the proposed routes make picking a preferred route under this criterion difficult. The Commission concludes that neither route is more favorable than the other under this criterion.

M. Overall Conclusion

In summary, the Commission's analysis of the routing criteria produces the following results:

<u>FACTOR</u>	<u>PREFERRED ROUTE</u>
1. Length of the line	NEITHER
2. Difficulty and cost of construction	STATE ROUTE 71

3.	Difficulty and cost of operation and maintenance	STATE ROUTE 71
4.	Environmental impacts	STATE ROUTE 71
5.	Impacts on historical resources	NEITHER
6.	Social and land use impacts	STATE ROUTE 71
7.	Number of affected landowners and other stakeholders	STATE ROUTE 71
8.	Proximity to homes and other structures	STATE ROUTE 71
9.	Proximity to existing and planned development	STATE ROUTE 71
10.	Community acceptance	NEITHER
11.	Visual impact	STATE ROUTE 71
12.	Presence of existing corridors	NEITHER

Having reviewed the evidence of record, and upon consideration of all relevant route selection criteria as described by the parties, the Commission finds that the criteria described above favor the State Route 71 route over the Fox River route. Therefore, the Commission finds that the State Route 71 route is the least cost route when all costs and benefits are taken into account.

In light of this conclusion, it is necessary to comment on that portion of this line which was to have been a double circuit with the LaSalle-Wedron transmission line pursuant to the March 11, 2009 Order. The last approximate two miles of the LaSalle-Wedron route and the Ottawa-Wedron route will no longer follow the same path. Rather, the shared path will now be limited to the last approximate mile closest to the Wedron Fox River Substation. Accordingly, the double circuit shall be limited to that portion of the two transmission lines from the point that they meet until they enter the Wedron Fox River Substation.

The Commission also must comment on the overall resources expended in this proceeding. While the prolonged nature of this proceeding is not entirely Petitioners' fault, much of the blame lands at their feet. The problem with Mr. Cruse's testimony discovered during the September 2007 evidentiary hearing could have been avoided and in fact should have never occurred. Had it not occurred, it is entirely plausible that this docket could have been completed during the first quarter of 2008, at the latest. Instead, the Commission finds itself having to revisit the Ottawa-Wedron route because Petitioners entered into a stipulation, apparently for the short-sighted purpose of making its problem with Mr. Cruse's testimony "go away." Had Petitioners done a better job of evaluating the advantages and disadvantages of its route alternatives, particularly with regard to environmental considerations (see, for example, the bald eagle discussion above) and impacts on existing land uses (see, for example, the Skydive Chicago and Ottawa Hospital discussions above), and done a better job of ensuring that its witnesses knew what is acceptable testimony, a significant amount of resources could have been saved for all parties, including Petitioners and ultimately their customers. The Commission strongly advises Petitioners to do a much better job of evaluating future transmission line route alternatives before bringing its next request for authority to construct a transmission line to the Commission.

III. FINDINGS AND ORDERING PARAGRAPHS

Having given due consideration to the entire record, the Commission is of the opinion and finds that:

- (1) IP and AITC are public utilities pursuant to the Act;
- (2) the Commission has jurisdiction over IP and AITC and the subject matter of this proceeding;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order on Reopening are supported by the evidence and are hereby adopted as findings herein;
- (4) the route for the transmission line between Ottawa and Wedron approved in the March 11, 2009 Order in this proceeding should not be used; instead Petitioners should construct the transmission line between Ottawa and Wedron along the route originally proposed by Petitioners, as reflected in the Appendix attached hereto;
- (5) the Certificate of Public Convenience and Necessity issued in the March 11, 2009 Order in this proceeding should be amended consistent with the findings contained in this Order on Reopening; and
- (6) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Certificate of Public Convenience and Necessity issued in the March 11, 2009 Order in this proceeding to Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company pursuant to Section 8-406 of the Public Utilities Act shall be amended, and that said amended certificate shall read as follows:

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

IT IS HEREBY CERTIFIED that the public convenience and necessity require (1) construction, operation, and maintenance by Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company of two 138kV electric transmission lines over the routes found appropriate in Docket No. 06-0706, as shown on the Appendix attached hereto, and (2) the transaction of an electric public utility business in connection therewith, all as herein before set forth.

IT IS FURTHER ORDERED that all other findings and conclusions contained in the March 11, 2009 Order in this matter remained unchanged.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order on Reopening is final; it is not subject to the Administrative Review Law.

DATED: May 17, 2010

Brief on Exceptions must be received by June 1, 2010.
Briefs in Reply to Exceptions must be received by June 8, 2010.

John D. Albers
Administrative Law Judge